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Committee of Government Representatives on the Participation of Civil Society
C/O Tripartite Committee
United Nations Economic Commission
for Latin America and the Caribbean (ECLAC)
1825 K St. NW, Suite 1120
Washington, DC 20006

Dear Committee of Government Representatives on the Participation of Civil Society:

The Council of the Americas, the U.S. Chamber of Commerce and the Association of American Chambers of Commerce in Latin America (AACCLA) have sponsored and developed the enclosed paper for submission to the Free Trade Area of the Americas Committee of Government Representatives on the Participation of Civil Society.

This paper, drafted by former Deputy U.S. Trade Representative Julius Katz and Robert Fisher, which draws on previous submissions to the Americas Business Forums, restates the need to move forward on free trade and offers recommendations to advance the process of hemispheric trade liberalization as agreed to at the 1994 Miami Summit of the Americas.

Sincerely,

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Views on the FTAA Negotiating Process

Executive Summary

The Council of the Americas, the Association of American Chambers of Commerce in Latin America, and the Chamber of Commerce of the U.S. welcome this opportunity to present their views on the negotiations for the Free Trade Area of the Americas (FTAA) to the FTAA Committee on Civil Society.

Throughout the process leading up to the launch of FTAA negotiations, we have been seriously concerned about how to gain and sustain public support for free trade. Our view remains that governments bear the primary responsibility in this area, particularly through high-level involvement to achieve early, concrete progress with demonstrable results in all areas of the negotiation.

Unfortunately, high-level support has been inconsistent, progress has been hard to discern, and the prospects for meaningful action by the year 2000 are doubtful.

There is some good news. Despite the economic crisis in Asia and its repercussions in this Hemisphere, governments generally have maintained a commitment to free trade. While the process of advancing free trade has slowed to a crawl, fears of a major pulling back from policies to open and deregulate markets remain unrealized. And within the FTAA process, most negotiating groups seem to be making steady, if unspectacular, progress in outlining the structure and content of an agreement.

But what is sorely absent is a reaffirmation of political commitment to the FTAA and to rebuilding public support for that goal. The economic crisis has created understandable questions in the public about the benefits and costs of globalization, particularly for those at the lower end of the economic spectrum.

Elected officials need to respond to those questions. Good trade policy is not a panacea for bad macroeconomic policy, but it plays an important role in promoting economic health by stimulating growth and improving consumer welfare.

The FTAA negotiations offer an excellent opportunity for governments within the Hemisphere to give full expression to their commitment to free trade and to deliver to their peoples on the promise of trade. In so doing, they would benefit both the region and the world at large.

But the present pace of negotiations puts at risk the credibility of the FTAA process and public support for the goal. Ministers have understood the difficulty of promoting an intangible product. In the Ministerial Declaration of San Jose, they reaffirmed their "commitment to make concrete progress by the year 2000" and called for agreement on specific business facilitation measures to be adopted by the turn of the century. We support these efforts and recommend the following: adoption and implementation of the WTO Valuation Agreement; implementation of a code of conduct for customs officials; harmonization of customs procedures for express shipments; adoption of new hemispheric rules to increase transparency in customs rule-making and procedures and to simplify customs procedures; and simplification of rules and procedures for low-cost shipments.

The Ministers' mandate to their officials to seek "business facilitation measures" was sufficiently broad to cover a wide range of actions in such areas as market access, investment, intellectual property rights, services, and agricultural and industrial standards.

It is disappointing that officials have limited their focus to customs matters. Important in their own right, changes in customs rules and procedures are not likely to generate kind of public interest and support needed to assure the FTAA's success.

To demonstrate the potential benefits of the FTAA and to stimulate enthusiasm for the negotiations, governments should be prepared to adopt at an early stage measures that encompass the wide range of issues being discussed in the negotiations. In earlier submissions to the Americas Business Forum, we made numerous recommendations for early, meaningful steps that could be taken. We urge officials to reconsider those recommendations, which cover virtually every topic under negotiation. We have summarized them in this paper.

One of the early major sticking points in the negotiations is whether to include provisions in the FTAA to protect labor and the environment. The matter is highly contentious, both between various countries and within many of our countries. In our view, free trade supports both increased standards of living for workers and creates the resources necessary to protect the environment. As such, trade should not be held hostage while governments wrestle with this complex issue. But recognizing that there is no consensus, we call on governments to commit to not derogating from existing environmental, health, safety, and labor measures in order to gain competitive advantage pending the resolution of how to address labor and environment in the FTAA, just as we have called for a hemispheric standstill on new trade-restricting measures.

Finally, a major difficulty for the entire FTAA process is that the goal of completing the agreement by 2005 seems incredibly distant. It is not a problem for today, but rather for tomorrow. We therefore recommend that when they next meet in Toronto, ministers should accelerate the pace of negotiations with the goal of concluding FTAA negotiations earlier than the 2005 target date.

Views on the FTAA Negotiating Process

The Council of the Americas, the Association of American Chambers of Commerce in Latin America, and the Chamber of Commerce of the U.S. welcome this opportunity to present their views on the negotiations for the Free Trade Area of the Americas (FTAA) to the FTAA Committee on Civil Society. We are strong supporters of the goal of free trade in the Hemisphere and have regularly provided substantive comments and recommendations through the Americas Business Forum and to trade ministers.

A major concern that we have had throughout the process leading to the launch of the negotiations is how to gain and sustain public support for the goal of free trade. We have believed that responsibility for this rests primarily with governments, through continuing high-level involvement and by achieving concrete progress in all areas of the negotiations.

Unfortunately, the evidence of high-level support appears inconsistent. Except in very limited areas, progress in the negotiations has been hard to discern. At this point, the prospect of concrete progress by the year 2000 is not encouraging.

Concerns have been expressed that the spread of the Asian economic crisis throughout the world could lead to a backlash against globalization, and a reversal of the policies of openness and free trade. These concerns are given substance by the calls for policy changes by a number of prominent persons, including politicians in a number of countries. Fortunately, governments for the greatest part have resisted their advice. Thus far, they have managed the crisis better than historical precedents might have suggested.

It is noteworthy that despite the deterioration of current-account balances for a number of countries, they have sought to maintain their open trade policies. Some governments have increased their antidumping activities, and have initiated countervailing-duty actions against subsidized imports. In some instances, there also has been resort to sanitary and phytosanitary restrictions and trade-restrictive customs-enforcement measures. But in general, governments have avoided resort to broadscale protectionist measures.

There also does not seem to be any significant slowing of efforts to pursue bilateral and sub-regional free trade arrangements. Virtually all countries in Latin America and the Caribbean are engaged in negotiating free trade agreements or implementing agreements within the region. Negotiations with countries outside the region also are underway between Mexico and the European Union (EU), MERCOSUR and the EU, and Chile and Korea.

Under the FTAA process, most negotiating groups seem to be making steady, if unspectacular, progress in outlining the structure and content of the ultimate FTAA. When

Ministers meet at the end of this year, they should be in a position to launch the final stages of the negotiations. To do so successfully, however, something more is required.

What is lacking at this point is a reaffirmation of high-level commitment to the FTAA and an effort at rebuilding public support for that goal. It is understandable that the economic crisis, and its rapid dissemination throughout the world, should lead to a questioning of the benefits of free trade as one dimension of globalization. World economic growth in 1998 was cut almost in half from a year earlier, down to little more than 2 percent. Countries directly affected were in recession. The economic crisis has had severe costs in terms of lost income, particularly for wage earners. As usual, those at the lowest end of the economic chain suffered the most.

We urge the governments of the Hemisphere to reaffirm their commitment to the FTAA. In addition, we encourage and support the efforts of the Inter-American Development Bank, the Organization of American States, and the U.N. Economic Commission for Latin America and the Caribbean to provide technical support to negotiating countries so as to facilitate their participation in the FTAA process.

Trade policy is not a substitute for macroeconomic policy, but it has an important role to play. Trade has had a demonstrable impact in stimulating economic growth and can make a significant contribution now. The FTAA negotiations provide an excellent opportunity for the nations of the Hemisphere to give full expression to their commitment to free trade in the region. In so doing, governments will not only benefit the region, but also will stimulate the wider effort in the World Trade Organization, which would significantly contribute to a return to world economic health.

Status of the Negotiations

Almost a year has passed since the launch of FTAA negotiations at the Santiago Summit. Since Santiago, a structure for the negotiations has been established and negotiating groups have held from one to three meetings of two to three days' duration. It seems evident that the work of the negotiating groups is at the very preliminary stages of negotiations. The groups are outlining the scope of their work and exchanging information. Some proposals are being tabled. While this work is necessary at the outset of a negotiation and can be characterized as progress of a sort, it does not suggest sufficient forward movement toward the goal of the FTAA nor toward the objective of concrete progress by the year 2000.

The present pace of the negotiations puts at risk the credibility of the negotiations and public support for the FTAA. It is difficult to gain public backing for something intangible. The lack of substantive progress, or the prospect of early progress, diminishes the importance of the negotiations in the public view.

There is a further risk. As the FTAA negotiations slowly progress, other developments are proceeding. Various negotiations are underway or are planned, both intra and extra-hemispheric, that will result in new preferential arrangements. Such arrangements can be beneficial in lowering trade barriers among the participating countries and can serve as building blocks to the larger goals of regional and multilateral trade liberalization. Unless, however, there are efforts underway toward those larger goals, the narrower arrangements, especially those that do not meet the requirements of Article XXIV of the GATT, can constitute discrimination against non-participating countries. As such, they can be trade distorting and the source of trade disputes.

In the Ministerial Declaration of San Jose, trade ministers reaffirmed their "commitment to make concrete progress by the year 2000" and directed the Trade Negotiating Committee (TNC) to reach agreement on specific business facilitation measures to be adopted by the turn of the century. The TNC's mandate was sufficiently broad that it could have considered a wide range of actions in such areas as market access, investment, intellectual property rights, services, and agricultural and industrial standards, and customs.

It is disappointing that the TNC has limited its focus to customs matters to promote business facilitation. We nevertheless support the TNC's efforts and recommend the following:

- Adoption and implementation of the WTO Valuation Agreement;
- Implementation of a code of conduct for customs officials to avoid arbitrary or corrupt customs treatment, in accordance with the Arusha Declaration;
- Harmonization of customs procedures for express shipments through implementation of the June 1996 Cancun Memorandum;
- Adoption of new hemispheric rules to increase transparency in customs rule-making and procedures and to simplify customs procedures; and
- Simplification of rules and procedures for low-cost shipments.

Expand the Agenda for Early Action

Important in their own right, these business facilitation measures represent a minimalist approach. They are not likely to generate the kind of public interest and support necessary to assure the success of the FTAA.

To demonstrate the potential benefits of the FTAA and to stimulate enthusiasm for the negotiations, governments should be prepared to adopt at an early stage measures that encompass the wide range of issues being discussed in the negotiations. In earlier submissions to the Americas

Business Forum, particularly that for the Santiago Summit, we made numerous recommendations both as to the content of the ultimate FTAA as well as to early concrete actions that might be taken. We wish to reiterate those recommendations and to summarize and highlight the most significant.

Market Access

Elimination of all tariff and non-tariff barriers lies at the heart of a free trade agreement. It is also one of the surest ways of stimulating economic growth in the area. The FTAA negotiations should therefore aim at the earliest possible removal of all trade barriers. Various procedures can be pursued toward this end, including immediate removal of low tariffs, adoption of ceiling rates from which progressive reductions can be made, and sectoral arrangements, where appropriate.

Agriculture

Agriculture is one of the most heavily protected and subsidized sectors in most countries. It is slow to yield to efforts at reform and trade liberalization. Yet agricultural trade is a major component of international trade and must be treated as all other goods in the FTAA. Major goals in the FTAA should include the removal of all tariff barriers and non-tariff barriers, clear rules on the application of sanitary and phytosanitary regulations, and the elimination of all subsidies on exports and domestic production. One measure that could be taken even in advance of the FTAA's conclusion is to declare the Hemisphere a subsidy-free zone, with all countries in the region pledging neither to extend subsidies on their own exports, nor to admit subsidized imports from outside the region.

Services

International trade in services represents a rapidly growing component of total trade. Beyond the necessary market access issues that will face negotiators, they need to provide for simplified procedures for business travel. Other key elements for services trade include clear professional qualification requirements and procedures, and technical standards and licensing requirements based upon objective criteria, such as professional competence. Provision also should be made for transparency in rule making, with opportunity for public comment on proposed rules, and harmonization or mutual recognition of professional standards.

Intellectual Property Rights

The protection and enforcement of intellectual property rights (IPR) is critical to the transfer of technology, which in turn promotes economic development. We urge that the FTAA set new standards for IPR protection going beyond standards set in existing multilateral or regional agreements.

Investment

We have submitted under separate cover our comments and recommendations on investment.

Subsidies, Antidumping and Countervailing Duties

The FTAA should provide for the elimination of trade-distorting subsidies within the region. It also should assure that antidumping and countervailing duty regulations conform to agreed standards, that they are clear and transparent, and that all parties to enforcement actions have adequate opportunity to present their views. National authorities should provide for judicial review in cases where administrative officials are alleged to have departed from standards in law and regulation.

Competition Policy

The FTAA should encourage member countries to apply strong national competition policies, to promote cooperation among national competition authorities and to avoid activities that encourage or tolerate private anti-competitive behavior, such as cartels.

Government Procurement

The FTAA should assure the elimination of domestic preferences and requirements in government procurement, which limit the ability of governments to make the most efficient use of fiscal resources. Provisions of the agreement should deal with issues of transparency, openness and due process in government procurement.

Dispute Settlement

To assure confidence in the integrity of the FTAA, the agreement should provide for a dispute settlement mechanism. There is now a considerable body of experience with the dispute resolution arrangements in the WTO and certain regional agreements that can guide negotiators in design of a mechanism suitable for the FTAA.

Labor and the Environment

Whether to include provisions in the FTAA to enforce labor and environmental standards is among the most contentious aspects of the FTAA agenda. It is a hotly debated topic not simply between various countries, but just as much within many of our nations.

Business groups have consistently said that the best way to promote the welfare of workers and the environment is through economic growth. Growth creates the resources to boost standards of living and to protect the environment. And trade, stimulated by trade agreements such as the FTAA, will stimulate hemispheric economic growth. We strongly support this concept.

Business organizations are in general agreement that labor and environmental concerns need to and are being addressed in a variety of international fora. But it is unacceptable to link the enforcement of labor and environmental standards in other countries to trade agreements.

We recognize that there is no consensus within the Hemisphere at this time on these issues. In earlier papers, we called for a hemispheric standstill in trade by avoiding the adoption of new tariff or non-tariff trade barriers during FTAA negotiations. We suggest a similar concept in the area of labor and the environment – that governments commit to not derogating from existing environmental, health, safety or labor measures in an effort to gain competitive advantage pending the resolution of how to address labor and the environment in the FTAA.

Conclusion

Given the propensity of many in the public and private sectors to focus on today's issues rather than tomorrow's, the path of least resistance today seems to be to downplay the FTAA in the hope that the environment for trade liberalization is better in the future. We believe this view is mistaken. There cannot be serious progress toward promoting the FTAA if policy-makers content themselves with marginal advances.

A major difficulty for the entire FTAA process is that the goal of completing the agreement by 2005 seems incredibly distant. Since an immediate deadline often is the best way to focus attention on an issue, we recommend that ministers at their next meeting at Toronto accelerate the pace of the negotiations, with the goal of concluding FTAA negotiations earlier than the 2005 target date.